JG Bernatt v Setiausaha Kehormat, Seremban International Golf Club & Anor and another appeal

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NOS N02–139 OF 1996 AND N02–279 OF 1997
DENIS ONG, PS GILL AND MOHD GHAZALI JJCA
10 FEBRUARY 2003

Unincorporated Associations *— Unincorporated associations — Club — Removal as committee member — Appellant disqualified from holding office for being listed as defaulter — Whether removal of committee member was arbitrary unconstitutional and an abuse of process of law — Whether committee's decision in line with constitution of club*

Unincorporated Associations *— Unincorporated associations — Member — Application for declaration that suspension of appellant's membership was not valid — Appellant disqualified from holding office as Committee member — Whether appellant' club membership was also suspended — Whether appellant's application flawed*

The appellant was a member of the Seremban International Golf Club ('the Club') and was elected as a member of the committee of management of the Club ('the Committee'). By a notice dated 3 November 1995 ('the said notice'), signed by one Selamat bin Saad who was the salaried secretary/manager of the Club, the appellant was informed that his account for September 1995 had a debit balance of RM442.71. The secretary/manager also drew the attention of the appellant to the provisions of r 50 of the Club's constitution ('the rules') and sought his cooperation in settling the said sum. The sum was however, not settled within seven days as required. As a result thereof, by a letter dated 13 November 1995, the secretary/manager of the Club informed the appellant that the Club had forthwith caused his name to be listed as a defaulter and posted him as such. That letter similarly sought the cooperation of the appellant to put his account in credit before the 14-day deadline and also informed him that the delistment exercise would be enforced on 27 November 1995. At a meeting of the Committee held on 24 November 1995, which the appellant attended, it was unanimously agreed that the appellant be disqualified from holding office as a Committee member with immediate effect on the grounds that he had been listed as a defaulter. Subsequently, by letter dated 29 November 1995, the Club informed the appellant that the Committee had, at its meeting of 24 November 1995, also decided to, inter alia, suspend the appellant from using the Club's facilities for three months from the date of the letter as a consequence of his failure to give a written explanation within 14 days after receipt of a show cause letter as to why he had used the Club's facilities whilst listed as a defaulter. By writ of summons dated 22 December 1995, the appellant sued the respondents, namely, the Club and the first vice-president of the Club. The appellant sought, inter alia, a declaration that the suspension of the appellant's membership was not valid and was not in accordance with the rules,

damages and costs. The suit was dismissed by the High Court. This was the appellant's appeal. A

Held, dismissing the appeal:

(1) At the meeting of the Committee held on 24 November 1995, the Committee decided that the appellant was disqualified from holding office as a member of the Committee. The Committee did not suspend his position as member of the Committee. His membership with the Club was still intact. The Committee also decided at that said meeting that the appellant was suspended from using the Club's facilities for three months from 29 November 1995 for failing and/or neglecting to give a written explanation within 14 days after receipt of the said show cause letter dated 1 August 1995 as to why he had used the Club's facilities on 23 July 1995 whilst listed as a defaulter. That being the position, the appellant's prayer for a declaration that the suspension of his membership was not valid and was not made in accordance with the rules, was clearly flawed since the appellant was never suspended from being a member of the Committee but was disqualified from holding office as member of the Committee. His membership with the Club was still intact as conceded by the appellant (see p 295E–H). B C D E

(2) There was no merit with regard to the appellant's complaint that his removal as a Committee member on 24 November 1995 was arbitrary and unconstitutional and an abuse of process of law. The relevant part of the minutes of the said Committee meeting showed that the Committee had decided to disqualify the appellant together with two other Committee members from holding office as they had been listed as defaulters. This decision was in line with the decision of the Committee meeting wherein it was resolved that any member of the Committee who breached rr 49, 50(1) and 50(2) of the rules will cease to hold office pursuant to r 50(2)(d) thereof (see p 298B–C, G–H). F G

(3) There was also no merit in the appellant's complaint that pursuant to r 50(1) of the rules, the said notice should have been signed by the treasurer of the Club instead of Selamat bin Saad. Rule 50(1) of the rules provided that if at any time a member's account remained unpaid within 14 days of his account being rendered, the treasurer shall send him a registered notice requiring him within seven days to settle his overdue account in full. Rule 50(1) provided that the treasurer shall 'send' the notice but there was nothing to show that the notice must bear the signature of the treasurer. In any case, r 22(13) of the rules stipulated that the Committee shall have the power to appoint a competent person as 'paid secretary and/or treasurer' and in the instant case, the Committee had appointed Selamat bin Saad as H I

A the 'club manager performing the duties of a salaried secretary and salaried treasurer' (see p 300D–G).

(4) There was nothing wrong with the decision of the Committee to suspend the appellant from using the Club's facilities for three months from 29 November 1995 because r 50(2)(a) of the rules B provided that being listed as defaulter shall involve 'withdrawal of credit, all Club and reciprocal facilities' (see p 301A–B).

[Bahasa Malaysia summary

C Perayu adalah seorang ahli Kelab Antarabangsa Seremban ('Kelab tersebut') dan telah diundi sebagai seorang ahli jawatankuasa pengurusan Kelab tersebut ('Jawatankuasa tersebut'). Melalui satu notis bertarikh 3 November 1995 ('notis tersebut'), yang telah ditandatangani oleh seorang bernama Selamat bin Saad yang merupakan setiausaha/pengurus bergaji Kelab tersebut, perayu telah D dimaklumkan bahawa akaun beliau untuk bulan September 1995 mempunyai baki debit berjumlah RM442.71. Setiausaha/pengurus tersebut juga menarik perhatian perayu kepada peruntukan peraturan 50 perlembagaan Kelab tersebut ('peraturan-peraturan tersebut') dan memohon kerjasama beliau untuk menjelaskan jumlah tersebut. Jumlah tersebut bagaimanapun, tidak dijelaskan dalam tujuh hari E yang ditetapkan. Akibat daripada itu, melalui sepucuk surat bertarikh 13 November 1995, setiausaha/pengurus Kelab tersebut telah memaklumkan kepada perayu bahawa Kelab tersebut telah mengemukakan nama beliau untuk disenaraikan sebagai seorang yang gagal membuat bayaran dan mempamerkan nama beliau sedemikian. Surat tersebut juga memohon kerjasama perayu untuk mengkreditkan F akaun beliau sebelum tamat tempoh 14 hari dan juga memaklumkan kepada beliau penyenaraian nama tersebut akan berkuatkuasa pada 27 November 1995. Dalam satu mesyuarat Jawatankuasa tersebut yang diadakan pada 24 November 1995, di mana perayu telah hadir, ia secara sebulat suara telah dipersetujui agar perayu disingkirkan G daripada memegang jawatan sebagai seorang ahli Jawatankuasa tersebut dengan serta merta atas alasan beliau telah disenaraikan sebagai seorang yang gagal membuat bayaran. Berikutan itu, melalui sepucuk surat bertarikh 29 November 1995, Kelab tersebut telah memaklumkan kepada perayu bahawa Jawatankuasa tersebut telah, dalam mesyuaratnya pada 24 November 1995, juga memutuskan H untuk, antara lain, menggantung perayu daripada menggunakan kemudahan Kelab tersebut untuk tiga bulan daripada tarikh surat tersebut akibat daripada kegagalan beliau untuk memberikan penjelasan bertulis dalam tempoh 14 hari selepas menerima surat tunjuk sebab kenapa beliau telah menggunakan kemudahan Kelab tersebut walaupun telah disenaraikan sebagai seorang yang gagal I membuat bayaran. Melalui writ saman bertarikh 22 Disember 1995, perayu telah menyaman responden-responden, iaitu, Kelab tersebut dan naib presiden pertama Kelab tersebut. Perayu telah memohon,

antara lain, satu deklarasi bahawa penggantungan keahlian perayu adalah tidak sah dan tidak menurut peraturan-peraturan tersebut, ganti rugi dan kos. Guaman tersebut telah ditolak oleh Mahkamah Tinggi. Ini adalah rayuan perayu. A

Diputuskan, menolak rayuan tersebut: B

(1) Dalam mesyuarat Jawatankuasa tersebut yang diadakan pada 24 November 1995, Jawatankuasa telah memutuskan bahawa perayu disingkirkan daripada memegang jawatan sebagai seorang ahli Jawatankuasa tersebut. Jawatankuasa tersebut tidak menggantung jawatan beliau sebagai ahli Jawatankuasa tersebut. Keahlian beliau dengan Kelab tersebut masih tidak terjejas. Jawatankuasa tersebut juga telah memutuskan di mesyuarat tersebut agar perayu digantung daripada menggunakan kemudahan Kelab tersebut selama tiga bulan daripada 29 November 1995 kerana gagal dan/atau lalai untuk memberikan satu penjelasan bertulis dalam tempoh 14 hari selepas menerima surat tunjuk surat bertarikh 1 Ogos 1995 tersebut tentang kenapa beliau telah menggunakan kemudahan Kelab tersebut pada 23 Julai 1995 walaupun telah disenaraikan sebagai seorang yang gagal membuat bayaran. Dalam kedudukan berikut, permohonan perayu untuk satu deklarasi bahawa penggantungan keahlian beliau tersebut adalah tidak sah dan tidak dibuat menurut peraturan-peraturan tersebut, dengan jelas cacat kerana perayu tidak pernah digantung daripada menjadi seorang ahli Jawatankuasa tersebut tetapi telah disingkir daripada memegang jawatan sebagai ahli Jawatankuasa tersebut. Keahlian beliau dengan Kelab tersebut masih tidak terjejas sebagaimana yang diakui oleh perayu (lihat ms 295E–H). C D E F

(2) Tiada merit berhubung aduan perayu bahawa penyingkiran beliau sebagai ahli Jawatankuasa tersebut pada 24 November 1995 telah dibuat secara sembarangan dan tidak berperlembagaan dan satu penyalahgunaan proses undang-undang. Bahagian relevan dalam minit mesyuarat Jawatankuasa tersebut menunjukkan bahawa Jawatankuasa tersebut telah memutuskan untuk menyingkirkan perayu bersama dua orang ahli Jawatankuasa tersebut yang lain daripada memegang jawatan kerana mereka telah disenaraikan sebagai orang-orang yang gagal membuat bayaran. Keputusan ini sejajar dengan keputusan Jawatankuasa tersebut di mana ia telah diputuskan bahawa mana-mana ahli Jawatankuasa yang melanggar peraturan-peraturan 49, 50(1) dan 50(2) peraturan-peraturan tersebut akan tidak lagi memegang jawatan menurut peraturan 50(2)(d) (lihat ms 298B–C, G–H). G H

(3) Tiada juga merit dalam aduan perayu bahawa menurut peraturan 50(1) peraturan-peraturan tersebut, notis tersebut sepatutnya ditandatangani oleh bendahari Kelab tersebut dan bukan Selamat I

bin Saad. Peraturan 50(1) tersebut memperuntukkan bahawa jika pada bila-bila masa akaun seorang ahli tidak dibayar dalam tempoh 14 hari, bendahari hendaklah menghantar satu notis berdaftar yang menghendaki beliau dalam tempoh tujuh hari menjelaskan akaun tertunggak beliau secara penuh. Peraturan 50(1) memperuntukkan bahawa bendahari hendaklah 'menghantar' notis tersebut tetapi tiada apa-apa yang menunjukkan bahawa notis tersebut perlu ditandatangani oleh bendahari. Dalam apa-apa keadaan, peraturan 22(13) peraturan-peraturan tersebut menetapkan bahawa Jawatankuasa tersebut hendaklah mempunyai kuasa untuk melantik seorang yang kompeten sebagai 'paid secretary and/or treasurer' dan dalam kes semasa, Jawatankuasa tersebut telah melantik Selamat bin Saad sebagai 'club manager performing the duties of a salaried secretary and salaried treasurer' (lihat ms 300D–G).

(4) Tiada apa-apa yang salah dalam keputusan Jawatankuasa tersebut untuk menggantung perayu daripada menggunakan kemudahan Kelab tersebut untuk tiga bulan daripada 29 November 1995 kerana peraturan 50(2)(a) tersebut memperuntukkan bahawa penalti bagi orang yang telah disenaraikan sebagai orang yang gagal membuat bayaran melibatkan 'withdrawal of credit, all Club and reciprocal facilities' (lihat ms 301A–B).]

Notes

For cases on club of unincorporated association, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 2208–2210.

For cases on member of unincorporated association, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 2247–2248.

Appeal from: Civil Suit No 22–103 of 1995 (High Court, Seremban)

Munjeet Singh (*Bernatt Pereira & Co*) for the appellant.

Mohd Hafarizam Harun (*Celine Chelladurai* with him) (*Rashid & Lee*) for the respondents.

Mohd Ghazali JCA (delivering judgment of the court): The appellant, who incidentally is an advocate and solicitor and running his own practice in Seremban, is a member of the Seremban International Golf Club ('the Club'). In 1994, he was elected as a member of the Committee of Management of the Club ('the Committee'). Rule 22 of the Constitution of the Club ('the rules') which deals with the duties and powers of the Committee provides, inter alia, that the Committee has the power to institute disciplinary proceedings against members who violate any of the rules or by-laws of the Club.

At a meeting of the Committee held on 24 November 1995, which the appellant attended, it was unanimously agreed, pursuant to r 50(2)(d) of the rules, that the appellant be disqualified from holding office as a member

of the Committee with immediate effect on the grounds that he has been listed as a defaulter on 13 November 1995. Rule 50 of the rules, inter alia, read:

> (1) If at anytime a member's account remains unpaid within 14 days of his account being rendered, the treasurer shall send him a registered notice requiring him within seven days to settle his overdue account in full.
>
> (2) Should such member fail to comply with such notice, the treasurer shall forthwith cause the name of such member to be listed as a defaulter and posted in any part of the Club. Such posting shall involve:
>
> (a) withdrawal of credit, all Club and reciprocal facilities;
> (b) disqualification from voting at a general meeting;
> (c) disqualification from being a proposer or seconder for application for membership;
> (d) disqualification from standing as a candidate for any office in the Committee or hold office;
> (e) disqualification from competing in any Club competition.

On the following day, ie 25 November 1995, the secretary of the Club in a letter addressed to the appellant confirmed that the Committee at its meeting held on 24 November 1995 has decided that he be disqualified from holding office as a member of the Committee with immediate effect. Subsequently, by letter dated 29 November 1995, the Club informed the appellant that the Committee at its meeting on 24 November 1995 has also decided to impose the following punishment as a consequence of his failure and/or neglect to give a written explanation within 14 days after receipt of a show cause letter dated 1 August 1995 as to why he used the Club's facilities whilst listed as a defaulter, namely:

(a) a warning; and

(b) that he is suspended from using the Club's facilities for three months from the date of the letter, viz, 29 November 1995.

By writ of summons dated 22 December 1995, the appellant sued the respondents, ie the Club and Ahmad Tajuddin bin Ujang, the first vice-president of the Club who was holding that post by virtue of being the then State Secretary, Negeri Sembilan and prayed for the following reliefs, which in its original text reads:

> 19 Oleh yang demikian plaintif memohon:
>
> (a) deklarasi bahawa AGM dalam tahun 1995 tidak sah dan ahli-ahli jawatankuasa kelab tidak sah di sisi undang-undang;
> (b) injunksi menghalang defendan-defendan daripada menggantung keahlian plaintif selagi perbicaraan penuh ini;
> (c) deklarasi bahawa penggantungan keahlian plaintif tidak sah dan tidak mengikut Perlembagaan;
> (d) ganti rugi terhadap defendan-defendan;
> (e) kos; dan
> (f) lain-lain perintah.

Simultaneously, the appellant filed a summons-in-chambers (encl 3) praying, inter alia, for an injunction to restrain the Club from suspending

him as a member and preventing him from using his privileges and rights as a member of the Committee until the final disposal of the suit. The orders sought for, in its original text, read:

> (a) Injunksi menahan kelab defendan maupun melalui jawatankuasa, ejen, pekerja ataupun ahli-ahli mereka atau melalui sesiapa pun daripada:
>
> (i) menggantungkan keahlian plaintif sehingga tamatnya kes ini secara muktamad; dan
>
> (ii) menghalang plaintif dari menggunakan keistimewaan dan hak-haknya sebagai seorang ahli jawatankuasa sehingga penyelesaian kes ini secara muktamad.

Enclosure 3 was dismissed by the learned High Court judge. Subsequently, at the end of the trial, the suit was also dismissed. The appellant appealed against both decisions.

On the application of the appellant, these appeals were heard together. In the midst of the hearing before us, the appellant withdrew his appeal in relation to encl 3, ie against the refusal of the learned High Court judge to grant the interim injunction. We subsequently dismissed that appeal with costs.

In relation to the second appeal, ie the main suit, counsel for the appellant informed us that he is restricting his appeal only to the third, fourth and fifth prayers of the claim, viz, for a declaration that the suspension of the appellant's membership is not valid and was not in accordance with the rules, damages and costs. From our reading, what is clear from the evidence is, at the said meeting of the Committee held on 24 November 1995, it was a decision of the Committee that the appellant is *disqualified* from holding office as member of the Committee. The Committee did not *suspend* his position as member of the Committee. His membership with the Club is still intact and he has admitted so before us at the outset of the hearing of these appeals. What the Committee also decided at that said meeting is that, in relation to his ordinary membership of the Club, he is *suspended from using the Club's facilities for three months* from 29 November 1995 for failing and/or neglecting to give a written explanation within 14 days after receipt of the said show cause letter dated 1 August 1995 as to why he used the Club's facilities on 23 July 1995 whilst listed as a defaulter. That being the position, we would think that the third prayer of the claim which is the main issue that is being pursued in this appeal, viz, for a declaration that the *suspension* of his membership is not valid and was not made in accordance with the rules, is clearly flawed since he was never suspended from being a member of the Committee but is disqualified from holding office as member of the Committee. His membership with the Club is still intact as conceded by him.

As mentioned earlier, at the outset of the hearing of these appeals, the appellant himself informed us that he is still a member of the Club. His counsel had then intimated that he now wished to amend the statement of claim but did not enlighten us further on the proposed amendment sought. We did not of course entertain this oral application and counsel also did not pursue the matter further.

In his submission, counsel for the appellant contended the main issue in this appeal is the validity of the 'removal' of the appellant as a member of the Committee. He then raised the following:

(i) the 'removal' of the appellant as a member of the Committee on 24 November 1995 is arbitrary and unconstitutional and an abuse of process of law;

(ii) the secretary/manager of the Club, who is appointed by the Committee, signed the said notice dated 3 November 1995 made pursuant to r 50(1) of the rules whereas it should be signed by the treasurer of the Club;

(iii) the appellant was requested to leave the said Committee meeting held on 24 November 1995 and that is unconstitutional;

(iv) the respondents did not allow the appellant to use the facilities of the Club for three months;

(v) the following extract of the minutes of the said Committee meeting held on 24 November 1995 is a fabrication, viz:

> 2. Menggunakan kemudahan kelab semasa 'defaulter'
>
> 2.1. Hukuman
> 2.1.1.Amaran
> 2.1.2.Dilarang menggunakan kemudahan kelab selama tiga bulan.
>
> 2.2. Ahli terlibat
> 2.2.1.En JG Bernatt B.78

Counsel, however, concede the appellant did not plead this allegation of fabrication in his statement of claim and further concede that the minutes of the said Committee meeting held on 24 November 1995 is an agreed document. We do not propose to go into this allegation of fabrication as it is a non-issue.

From our reading, the events which led to the Committee's decision to disqualify the appellant from holding office as a member of the Committee were in relation to his account as member of the Club, namely, he committed the 'sin' of not settling his Club bills on time. It was highlighted at the trial that for the month of May 1995, the appellant's account with the Club had a debit of balance of RM220.31 and he did not settle that sum within 14 days of the account being rendered. Rule 50(1) of the rules, reproduced earlier, provides if at any time a member's account remains unpaid within 14 days of his account being rendered, the treasurer shall send him a registered notice requiring him within seven days to settle his overdue account in full. The evidence clearly shows that the Club duly sent the required notice which was dated 4 July 1995 but the appellant did not settle the overdue account within seven days as required by that rule. Consequently, by letter dated 15 July 1995, the Club informed the appellant as he has yet to put his account in credit, the Club has forthwith caused his name to be listed as a defaulter and posted him as such. This course of action by the Club was carried out in accordance with r 50(2) of the rules, reproduced earlier, which provides if a member of the Club fails

A to comply with the notice referred to in r 50(1), the treasurer shall forthwith cause the name of such member to be listed as a defaulter and posted in any part of the Club and that such posting shall involve, inter alia, withdrawal of credit and all Club facilities. That letter of 15 July 1995 also reminded the appellant of r 50(3) of the rules. Rule 50(3) reads:

B

> Should any member's account remain unpaid at the expiration of 14 days from the date of posting as a defaulter under s (2) of this Rule, the member shall 'ipso facto' cease to be a member of this Club. The Committee may then take steps to institute legal proceedings for the recovery of amount due from such member.

C That letter further sought the co-operation of the appellant to put his account in credit before the 14 days deadline and informed him that the delistment exercise will be enforced on 1 August 1995.

Meanwhile on 23 July 1995, whilst listed as a defaulter, the appellant was found playing tennis on the Club's premises at about 9.30am by an employee of the Club who then lodged a report. Vide a 'show cause' letter D dated 1 August 1995, the Club informed the appellant that a report has been lodged against him with regards to the above, viz, that he played tennis on the said date and time whilst listed as a defaulter and which status did not entitle him to use the facilities of the Club. That 'show cause' letter also stated the following:

E

> Should you wish to refute the contents of the report, you are welcome to submit your written version of the incident on or before 28 August 1995. Should you however fail to do so, within the specified time, the Committee of Management shall rightfully assume that the contents of the said report is true and correct and shall proceed further in the matter.

F The appellant did not respond to the said 'show cause' letter on or before 28 August 1995 as requested therein. Meanwhile, on 26 July 1995 the appellant settled the said outstanding sum of RM220.31. We observe that pursuant to r 50(3) of the rules he would have ceased to be a member of the Club itself if he settled the said outstanding sum after 29 July 1995, ie after 14 days have expired from the date of posting as a defaulter.

G It was also highlighted at the trial that by letter dated 25 September 1995, the Club informed the appellant as he has yet to put his account for July 1995 in credit, the Club has forthwith caused his name to be listed as a defaulter in accordance with r 50(2) of the rules and posted him as such. That letter sought the co-operation of the appellant to put his account in credit before the 14 days deadline and also informed him that the delistment H exercise will be enforced on 11 October 1995. The amount which was outstanding was RM330.55.

Yet again, by notice dated 3 November 1995, the secretary/manager of the Club informed the appellant that his account for September 1995 has a debit balance of RM442.71 and that it has not been settled within 14 days. I The secretary/manager also drew the attention of the appellant to the provisions of r 50 of the rules and sought his co-operation in settling the said sum within seven days. That sum was not settled within seven days as

required as a result of which by letter dated 13 November 1995, the secretary/manager of the Club informed the appellant as he has yet to put his September 1995 account in credit, the Club has forthwith caused his name to be listed as a defaulter and posted him as such. That letter similarly sought the cooperation of the appellant to put his account in credit before the 14 days deadline and also informed him that the delistment exercise will be enforced on 27 November 1995. That letter also reminded the appellant of r 50(3) of the rules, viz, that should any member's account remain unpaid at the expiration of 14 days from the date of posting as a defaulter the member shall *ipso facto* cease to be a member of the Club.

We find no merit with regard to the first complaint raised before us, viz, that the 'removal' of the appellant as a member of the Committee on 24 November 1995 is arbitrary and unconstitutional and an abuse of process of law. In relation to this, the relevant part of the minutes of the said Committee meeting held on 24 November 1995, which incidentally was the 12th meeting of the Committee and which was attended by the appellant, reads as follows:

> 4.15. Tindakan ke atas ahli jawatankuasa pengurusan kelab yang tidak mematuhi peraturan 50(2)(d):
>
> 4.15.1 Ahli jawatankuasa pengurusan berikut digugurkan dari memegang jawatan di dalam jawatankuasa serta merta kerana telah disenaraikan sebagai 'defaulter' pada 13 November 1995
>
> a) En JG Bernatt
> b) En James Tan
> c) En SK Paul.
>
> 4.15.2 Keputusan adalah selaras dengan keputusan Mesyuarat Jawatankuasa Pengurusan Kelab Ke-Sebelas di mana ahli jawatankuasa mesyuarat kelab yang melanggar Perlembagaan kelab peraturan 49, 50(1) dan 50(2) akan digugurkan mengikut peraturan 50(2)(d). Tindakan ahli berkenaan untuk menjelaskan hutangnya selepas disenaraikan sebagai 'defaulter' dan sebelum disenaraikan sebagai 'delisted' akan hanya mengembalikan haknya sebagai ahli biasa sahaja.
>
> 4.15.3 Surat pemberitahuan tentang pengguguran mereka hendaklah dihantar.

Paragraph 4.15.1 of the minutes show that the Committee decided that the appellant together with two other members of the Committee are disqualified from holding office as they have been listed as defaulters. Paragraph 4.15.2 show that such decision was in line with the decision of the Committee at its 11th meeting wherein it was resolved that any member of the Committee who breach rr 49, 50(1) and 50(2) of the rules will cease to hold office pursuant to r 50(2)(d) of the same. It was also decided at that 11th meeting that the status of such a member shall revert to that of an ordinary member if the debt is settled before he is delisted. The minutes of the 11th meeting of the Committee, which was held on 27 October 1995, show that the appellant attended that meeting. Paragraphs 7.2 of the minutes of that 11th meeting read as follows:

A 7.2 Peraturan kelab berkaitan dengan defaulter

7.2.1 Peraturan 50(2)(d) menetapkan bahawa seorang ahli yang menjadi 'defaulter' akan mengalami 'disqualification from standing as a candidate for any office in the Committee or hold office.' Ini bererti seseorang ahli jawatankuasa pengurusan kelab akan secara otomatis gugur dari menjadi ahli jawatankuasa pengurusan apabila B menjadi 'defaulter'. Pembayaran hutangnya selepas menjadi 'defaulter' akan hanya melayakkan beliau menjadi ahli biasa sahaja.

7.2.2 Pengurusan kelab dikehendaki mematuhi sepenuhnya peraturan 50(1), 50(2) dan 50(3) Perlembagaan kelab tentang pembayaran hutang kelab 'defaulters' untuk setiap bulan (walaupun membayar C hutangnya setelah senarai dikeluarkan) dan ahli-ahli 'de-listed' hendaklah dilaporkan di tiap mesyuarat Jawatankuasa Pengurusan Kelab.

What is clear as daylight is that the appellant was posted as a defaulter for failing to put his account for September 1995 in credit and was informed as such vide the said letter dated 13 November 1995. He was given 14 days D from 13 November 1995 to put his account into credit. He was also informed that the delistment exercise will be enforced on 27 November 1995, viz, that he shall *ipso facto* cease to be a member of the Club if he fails to put his account into credit by that deadline. At that said meeting of the Committee held on 24 November 1995, it is not disputed that the appellant E remained posted as a defaulter. He, together with two other members of the Committee who were also posted as defaulters, were 'dropped' from the Committee.

Looking at the above, we cannot see how the first complaint raised before us can hold water. His posting as a defaulter was carried out in accordance with the rules. From our reading, these rules were promulgated F to ensure prompt settlement of accounts. He was given sufficient notice vide the notice dated 3 November 1995 which was issued pursuant to r 50(1) of the rules and the letter dated 13 November 1995 stating that he is posted as a defaulter as from that date. He attended the 11th and 12th meetings of the Committee wherein the subject of defaulters who are also Committee members was brought up and discussed. The minutes of the 11th meeting G of the Committee reproduced above show that the Committee has decided to strictly enforce what is already provided for in the rules, viz, to take action against members of the Club including Committee members who do not settle their Club bills on time. To allege now that his 'removal' as a member of the Committee on 24 November 1995 is arbitrary and unconstitutional and an abuse of process of law is preposterous. He was disqualified from H holding office as member of the Committee by virtue of the rules. The learned High Court judge was of the view that the appellant was present when item 4.15 of the minutes relating to the three defaulters including the appellant was being discussed. In relation to this he said:

I Mahkamah mendapati lebih kemungkinan plaintif dan James Tan keluar apabila plaintif dan pengerusi bertengkar daripada kemungkinan mereka keluar semasa mesyuarat membincangkan perkara yang melibatkan mereka. Plaintif tidak membangkitkan apa-apa perkara apabila item 4.1. dibincangkan

> di mesyuarat itu dan apabila sampai kepada item 4.15 pengerusi bertanya dan setiausaha menjawab bahawa plaintif, James Tan dan SK Paul adalah ahli-ahli jawatankuasa yang tidak membayar akaun masing-masing. Mesyuarat berbincang, keputusan dibuat dan plaintif dan James Tan keluar semasa pertengkaran.

The learned High Court judge saw and heard the witnesses and was of the view that the appellant was present when the matter was discussed and the notes of proceedings do not at all suggest that this view is erroneous. The appellant cannot now complain his 'removal' was arbitrary and unconstitutional and an abuse of process of law or that requesting him to leave the meeting room is 'unconstitutional'. He has to comply with r 50(1) and (2) of the rules notwithstanding he is a member of the Committee. Since the Club has religiously followed the procedure provided for in r 50(1) and (2) of the rules, we cannot see how it can be argued that his 'removal' is against the rules or 'unconstitutional' as he puts it. We cannot also see how it can be said that asking him to leave the meeting is unconstitutional. The moment the Committee ruled that the appellant is disqualified from holding office, he has to leave the meeting as he is no longer a member of the Committee.

We also cannot find any merit in the complaint of the appellant that it was the secretary/manager of the Club and not the treasurer of the Club who signed the said notice dated 3 November 1995, viz, the notice that reminded him that his account for September 1995 was outstanding, and that this is contrary to r 50(1) of the rules. Rule 50(1) of the rules provide that if at any time a member's account remains unpaid within 14 days of his account being rendered, the treasurer shall send him a registered notice requiring him within seven days to settle his overdue account in full. We observe that the rule states the treasurer shall 'send' the notice. There is nothing to show that the notice must bear the signature of the treasurer. Be that as it may, in relation to this, r 22(13) of the rules provide the Committee shall have the power to appoint a competent person as 'paid Secretary and/or Treasurer'. It was adduced in evidence at the trial that by letter dated 8 April 1995 the Committee appointed one Selamat bin Saad as 'Club Manager performing the duties of a salaried Secretary and salaried Treasurer'. The said notice dated 3 November 1995 was signed by the said Selamat bin Saad. In his grounds of judgment, the learned trial judge adequately dealt with this issue in the following manner; he said:

> The term 'Treasurer' is defined under r 4 of the Club Rules and it means a paid treasurer as appointed under r 22(13) or an honorary treasurer as appointed (nominated) under r 21. The Committee of Management may appoint a competent person under r 22(13) as paid secretary and/or treasurer. By a letter dated 8 April 1995 (exh KB-1) the Committee of Management appointed En Selamat bin Saad as 'Club Manager performing the duties of a salaried secretary and salaried treasurer'. Thus the above notices sent and signed by the Hon Secretary/Manager have the effect of the Treasurer's notice because the 'Manager' is clothed with the power of a salaried Treasurer. For the purpose of clarity the notices should have been signed by 'Manager acting as Secretary/Treasurer'. The misdescription if any, relates to form but not to substance.

A We do not propose to comment further on this issue as the matter has been adequately dealt with by the learned trial judge.

We also find nothing wrong with the decision of the Committee to suspend the appellant from using the Club's facilities for three months from 29 November 1995. He did not respond to the said show cause letter and now complains he has been wronged. Rule 50(2)(a) provides being listed as defaulter shall involve 'withdrawal of credit, all Club and reciprocal facilities'. The appellant used the Club's tennis court whilst listed as a defaulter. He was given ample time and opportunity to refute the complaint in relation to the above lodged against him but did not bother to state his case to the Committee within the time prescribed. He was then a member of the Committee when served with the said show cause letter. We observe that the appellant did not seek any order in his statement of claim in relation to the punishment imposed upon him by the Committee, viz, the warning and suspension of club facilities. That being the situation, we cannot see the relevance or purpose of this complaint.

For the reasons discussed above, we dismissed this second appeal with costs and ordered that the deposit to be paid to the respondents towards the account of taxed costs.

Appeal dismissed.

Reported by Lim Lee Na